



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
Northwest Region
7600 Sand Point Way N.E., Bldg. 1
Seattle, WA 98115

Refer to:
OSB2001-0103-FEC

July 12, 2001

Mr. Lawrence C. Evans
U.S. Army Corps of Engineers
Attn: Bill Davis
Regulatory Branch, CENWP-OP-G
P.O. Box 2946
Portland, OR 97208-2946

Re: Endangered Species Act Section 7 Formal Consultation and Essential Fish Habitat
Consultation for Excavation at Two Existing Private Boat Ramps/Docks near River
Mile 84 on the Columbia River, Columbia County, Columbia City, Oregon (Corps No.
2001-00293)

Dear Mr. Evans:

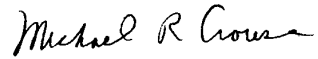
Enclosed is a biological opinion (Opinion) prepared by the National Marine Fisheries Service (NMFS) pursuant to section 7 of the Endangered Species Act (ESA) on the above referenced project. This Opinion addresses Snake River sockeye salmon (*Oncorhynchus nerka*), Snake River fall chinook salmon (*O. tshawytscha*), Snake River spring/summer chinook salmon, Upper Columbia River spring-run chinook salmon, Lower Columbia River chinook salmon, Upper Willamette River chinook salmon, Columbia River chum salmon (*O. keta*), Snake River steelhead (*O. mykiss*), Upper Columbia River steelhead, Middle Columbia River steelhead, Upper Willamette River steelhead, and Lower Columbia River steelhead and constitutes formal consultation for these listed species. NMFS concludes in this Opinion that the proposed action is not likely to jeopardize the continued existence of those listed species or destroy or adversely modify critical habitat. Pursuant to section 7 of the ESA, NMFS has included reasonable and prudent measures with non-discretionary terms and conditions that NMFS believes are necessary and appropriate to minimize the potential for incidental take associated with this project.

This Opinion also serves as consultation on Essential Fish Habitat for chinook salmon, coho salmon, (*O. kisutch*), and starry flounder (*Platyichthys stellatus*) under the Magnuson-Stevens Act and its implementing regulations (50 CFR Part 600).



Please direct any questions regarding this consultation to Ron Lindland of my staff in the Oregon Habitat Branch at 503.231.2315.

Sincerely,

A handwritten signature in black ink that reads "Michael R. Crown". The signature is written in a cursive style with a large, stylized "M" and "C".

P.r

Donna Darm
Acting Regional Administrator

Enclosure

Endangered Species Act - Section 7
Consultation
&
Magnuson-Stevens Act
Essential Fish Habitat Consultation

BIOLOGICAL OPINION

Excavation at Two Existing Private Boat Ramps and Docks
Near River Mile 84 of the Columbia River
Columbia County, Columbia City, Oregon
(Corps No. 2001-00293)

Agency: Army Corps of Engineers, Portland District

Consultation Conducted By: National Marine Fisheries Service,
Northwest Region

Date Issued: July 12, 2001

Refer to: OSB200-0103FEC

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1. ENDANGERED SPECIES ACT

1.1 Background

On May 21, 2001, the National Marine Fisheries Service (NMFS) received a letter from the Corps of Engineers (COE) requesting formal consultation on the issuance of a permit under section 10 of the Rivers and Harbors Act to Mr. Ron Schlumpberger for minor excavation at two existing private boat docks and ramps near River Mile 84 on the Columbia River (COE Permit No. 2001-00293). The project is located in Columbia County at Columbia City, Oregon (T5N, R1E, Section 28). The proposed action is the removal of a total of approximately 200 cubic yards of river bottom material to deepen the area around two existing private boat docks and boat ramps. In the May 17, 2001, letter, the COE determined that Snake River sockeye salmon (*Oncorhynchus nerka*), Snake River spring/summer chinook salmon (*O. tshawytscha*), Snake River fall chinook salmon (*O. tshawytscha*), Lower Columbia River steelhead (*O. mykiss*), Upper Columbia River steelhead (*O. mykiss*), Snake River steelhead (*O. mykiss*), Middle Columbia River steelhead (*O. mykiss*), Columbia River chum salmon (*O. keta*), Lower Columbia River chinook salmon (*O. tshawytscha*), Upper Columbia River spring run chinook salmon (*O. tshawytscha*), Upper Willamette River steelhead (*O. mykiss*) and Upper Willamette River chinook (*O. tshawytscha*) may occur within the project area and that the proposed project is “likely to adversely affect” (LAA) the subject listed species or their designated critical habitat. References and dates listing status, critical habitat designations and ESA section 4(d) take prohibitions are listed in Table 1.

The NMFS has prepared this biological opinion (Opinion) to address impacts to these species as a result of the proposed project. The objective of this Opinion is to determine whether the action to excavate approximately 200 cubic yards of bottom material from three separate sites (approximately 70 cubic yards from each site) in the vicinity of the existing boat docks and boat ramps is likely to jeopardize the continued existence of the above listed species or destroy or adversely modify critical habitat.

1.2 Proposed Action

The proposed action is the excavation of a total of approximately 200 cubic yards of river bottom material from three locations in the vicinity of two adjacent, existing, private boat docks and boat ramps in the Columbia River near RM 84 at Columbia City, Oregon. Each excavated area would be approximately 25 feet by 25 feet by 3 feet in depth (70 cubic yards), and would be located at the foot of each existing boat ramp and adjacent to the existing dock structures. Material would be excavated using a backhoe, and would be done during low tide, in order to minimize the amount of actual in-water work. The estimated time for completion of the project is one or two days. The work would be done during the summer months of 2001, which is outside the Oregon Department of Fish and Wildlife (ODFW) preferred in-water work period for this reach of the Columbia River (November 1-February 28) (ODFW 2000). Because the subject action would occur outside the ODFW preferred in-water work period, it would not be covered under NMFS’ March 21, 2001, “Programmatic Biological Opinion – 15 Categories of Activities

Requiring Department of the Army Permits.” All excavated material would be deposited at an upland site.

Table 1. References for additional background on listing status, biological information, and critical habitat elements for the listed and proposed species addressed in this biological and conference opinion.

Species	Listing Status	Critical Habitat	Protective Regulations	Biological Information, Historical Population Trends
Columbia River chum salmon	March 25, 1999; 64 FR 14508, Threatened	February 16, 2000; 65 FR 7764	July 10, 2000; 65 FR 42422	Johnson <i>et al.</i> 1997; Salo 1991
Lower Columbia River steelhead	March 19, 1998; 63 FR 13347, Threatened	February 16, 2000; 65 FR 7764	July 10, 2000; 65 FR 42422	Busby <i>et al.</i> 1995; 1996
Middle Columbia River steelhead	March 25, 1999; 64 FR 14517, Threatened	February 16, 2000; 65 FR 7764	July 10, 2000; 65 FR 42422	Busby <i>et al.</i> 1995; 1996
Upper Columbia River steelhead	August 18, 1997; 62 FR 43937, Endangered	February 16, 2000; 65 FR 7764	July 10, 2000; 65 FR 42422	Busby <i>et al.</i> 1995; 1996
Upper Willamette River steelhead	March 25, 1999 64 FR 14517, Threatened	February 16, 2000; 65 FR 7764	July 10, 2000; 65 FR 42422	Busby <i>et al.</i> 1995; 1996
Snake River Basin steelhead	August 18, 1997; 62 FR 43937, Threatened	February 16, 2000; 65 FR 7764	July 10, 2000; 65 FR 42422	Busby <i>et al.</i> 1995; 1996
Snake River sockeye salmon	November 20, 1991; 56 FR 58619, Endangered	December 28, 1993; 58 FR 68543	November 20, 1991; 56 FR 58619	Waples <i>et al.</i> 1991a; Burgner 1991
Lower Columbia River chinook salmon	March 24, 1999; 64 FR 14308, Threatened	February 16, 2000; 65 FR 7764	July 10, 2000; 65 FR 42422	Myers <i>et al.</i> 1998; Healey 1991
Upper Columbia River spring-run chinook salmon	March 24, 1999; 64 FR 14308, Endangered	February 16, 2000; 65 FR 7764	July 10, 2000; 65 FR 42422	Myers <i>et al.</i> 1998; Healey 1991
Upper Willamette River chinook salmon	March 24, 1999; 64 FR 14308, Threatened	February 16, 2000; 65 FR 7764	July 10, 2000; 65 FR 42422	Busby <i>et al.</i> 1995; 1996
Snake River spring/summer-run chinook salmon	April 22, 1992; 57 FR 14653, Threatened	December 28, 1993; 58 FR 68543	April 22, 1992; 57 FR 14653	Matthews and Waples 1991; Healey 1991
Snake River fall chinook salmon	April 22, 1992; 57 FR 14653, Threatened	December 28, 1993; 58 FR 68543	April 22, 1992; 57 FR 14653	Waples <i>et al.</i> 1991b; Healey 1991

1.3 Biological Information and Critical Habitat

Based on typical juvenile out-migration timing for steelhead and chinook (DeHart 2001 and Dawley et al. 1986) at Bonneville Dam (RM 146) and at Jones Beach (RM47), the NMFS expects that juvenile salmonids may be present in the project area (RM 84) during the proposed in-water work period. The proposed action would occur within designated critical habitat for listed species.

The action area is defined by NMFS regulations (50 CFR 402) as “all areas to be affected directly or indirectly by the Federal action and not merely the immediate area involved in the action.” The action area includes designated critical habitat affected by the proposed action within the Columbia River (RM 84). The Columbia River at Columbia City, Oregon serves as a migration area for all listed species under consideration in this Opinion. It may also serve as a feeding and rearing area for juvenile chum and sub-yearling chinook salmon. Essential features of the area for the species are: (1) Substrate; (2) water quality; (3) water quantity; (4) water temperature; (5) water velocity; (6) cover/shelter; (7) food (juvenile only); (8) riparian vegetation; (9) space; and (10) safe passage conditions (50 CFR 226). The essential features this proposed project may affect are water quality (turbidity) and disturbance of river substrate resulting from the excavation activities.

1.4 Evaluating Proposed Actions

The standards for determining jeopardy are set forth in Section 7(a)(2) of the ESA as defined by 50 CFR 402 (the consultation regulations). NMFS must determine whether the action is likely to jeopardize the listed species and/or whether the action is likely to destroy or adversely modify critical habitat. This analysis involves the initial steps of: (1) Defining the biological requirements of the listed species, and (2) evaluating the relevance of the environmental baseline to the species' current status.

Subsequently, NMFS evaluates whether the action is likely to jeopardize the listed species by determining if the species can be expected to survive with an adequate potential for recovery. In making this determination, NMFS must consider the estimated level of mortality attributable to: (1) Collective effects of the proposed or continuing action; (2) the environmental baseline; and (3) any cumulative effects. This evaluation must take into account measures for survival and recovery specific to the listed salmon's life stages that occur beyond the action area. If NMFS finds that the action is likely to jeopardize the continued existence of the listed species, NMFS must identify reasonable and prudent alternatives for the action.

Furthermore, NMFS evaluates whether the action, directly or indirectly, is likely to destroy or adversely modify the listed species' critical habitat. The NMFS must determine whether habitat modifications appreciably diminish the value of critical habitat for both survival and recovery of the listed species. The NMFS identifies those effects of the action that impair the function of any essential feature of critical habitat. The NMFS then considers whether such impairment appreciably diminishes the habitat's value for the species' survival and recovery. If NMFS

concludes that the action will adversely modify critical habitat, it must identify any reasonable and prudent measures available.

For the proposed action, NMFS' jeopardy analysis considers direct or indirect mortality of fish attributable to the action. NMFS' critical habitat analysis considers the extent to which the proposed action impairs the function of essential biological elements necessary for juvenile and adult migration, spawning, and rearing of the listed and proposed species under the existing environmental baseline.

1.4.1 Biological Requirements

The first step in the methods NMFS uses for applying the ESA section 7(a)(2) to listed salmonids is to define the species' biological requirements that are most relevant to each consultation. The NMFS also considers the current status of the listed species taking into account population size, trends, distribution and genetic diversity. To assess the current status of the listed species, NMFS starts with the determinations made in its decision to list the species for ESA protection and also considers new data available that is relevant to the determination.

The relevant biological requirements are those necessary for the listed species to survive and recover to a naturally reproducing population level at which protection under the ESA would become unnecessary. Adequate population levels must safeguard the genetic diversity of the listed stock, enhance its capacity to adapt to various environmental conditions, and allow it to become self-sustaining in the natural environment.

For this consultation, the biological requirements are improved habitat characteristics that function to support successful rearing and migration. The current status of the listed species, based upon their risk of extinction, has not significantly improved since the species were listed.

1.4.2 Environmental Baseline

The biological requirements of the listed species are currently not being met under the environmental baseline. Their status is such that there must be a significant improvement in the environmental conditions they experience over those currently available under the environmental baseline. Any further degradation of these conditions would have a significant impact due to the amount of risk they presently face under the environmental baseline.

The defined action area is the area that is directly and indirectly affected by the proposed action. The direct effects occur at the project site and may extend upstream or downstream, based on the potential for impairing fish passage, hydraulics, sediment and pollutant discharge, and the extent of riparian habitat modifications. Indirect effects may occur throughout the watershed where actions described in this Opinion lead to additional activities or affect ecological functions contributing to stream degradation. For the purposes of this Opinion, the action area is defined as the Columbia River stream bed and streambank in the immediate vicinity of the project site

and downstream to the extent of visible short-term turbidity increases resulting from the project work. Other areas of the Columbia River are not expected to be directly or indirectly impacted.

The area of the Columbia River where the proposed project would occur is bordered by a residential area of Columbia City, Oregon, with houses in close proximity to the river bank and several boat ramps and docks in the vicinity. Substrate in the area consists of fine gravel, sand, and silt. Riparian vegetation consists of lawn grasses; no trees or shrubs are present.

1.5 Analysis of Effects

1.5.1 Effects of Proposed Action

In-water work associated with excavation of stream bottom material could result in the disturbance of juvenile salmonids that may be rearing in or migrating through the project area. Excavation of river bottom material will result in disturbance of the substrate and a temporary increase in turbidity. The temporary increase in stream turbidity could result in temporarily reduced feeding efficiency for juvenile salmonids which may be present in the area. There is also the possibility that the excavator could kill or injure juvenile salmonids. Direct mortality is expected to be minimal, because juvenile salmonids will likely avoid the equipment and can move freely upstream or downstream from the project site.

During migration, juvenile fall chinook salmon typically orient toward shallow, near shore habitats (Dawley et al. 1986). Sockeye salmon and steelhead juveniles are normally found mid-river during migration (Dawley et al. 1986). Juvenile salmonid species such as spring chinook, sockeye, and coho salmon and up-river steelhead usually move down river relatively quickly and in the main channel. Subyearling fall and summer chinook salmon are the species most likely to be found in shallow, near-shore areas, and are, therefore, the most likely to be disturbed by any in-water work.

The amount of in-water work necessary to complete the project will be minimized by performing the work during low tide periods. The duration of work will be short (one or two days). There will be no loss of riparian vegetation as a result of this project, since none currently exists in the project area. The potential net effect from of the proposed action is expected to maintain the present conditions within the action area.

1.5.2 Effects on Critical Habitat

NMFS designates critical habitat based on physical and biological features that are essential to the listed species. Essential features for designated critical habitat include substrate, water quality, water quantity, water temperature, food, riparian vegetation, access, water velocity, space and safe passage. This reach of the Columbia River serves mainly as a migration corridor for adult and juvenile salmonids. For the proposed action, NMFS expects that the effects will tend to maintain conditions in the watershed under current baseline conditions over the long

term. The action area currently provides poor habitat for juvenile salmonids because of the lack of instream cover, lack of riparian vegetation, and numerous dock structures.

1.5.3 Cumulative Effects

Cumulative effects are defined in 50 CFR 402.02 as "those effects of future State or private activities, not involving Federal activities, that are reasonably certain to occur within the action area of the Federal action subject to consultation." For the purposes of this analysis, the action area is the Columbia River stream bed and streambank in the immediate vicinity of the project site and downstream to the extent of visible short-term turbidity increases resulting from the project work. Other activities within the watershed have the potential to impact fish and habitat within the action area. Future Federal actions, including the ongoing operation of hydropower systems, hatcheries, fisheries, and land management activities will be reviewed through separate section 7 consultation processes. NMFS is not aware of any significant change in non-Federal activities that are reasonably certain to occur. NMFS assumes that future private and State actions will continue at similar intensities as in recent years.

1.6 Conclusion

NMFS has determined, based on the available information, that the proposed action covered in this Opinion is not likely to jeopardize the continued existence of listed salmonids or adversely modify critical habitat. NMFS used the best available scientific and commercial data to apply its jeopardy analysis, when analyzing the effects of the proposed action on the biological requirements of the species relative to the environmental baseline, together with cumulative effects. NMFS believes that the proposed action would cause a minor, short-term degradation of anadromous salmonid habitat due to turbidity caused by in-water excavation of stream substrates. Although direct mortality from this project could occur during the in-water work, it is not expected, and the level of any mortality would be minimal and would not result in jeopardy.

1.7 Reinitiation of Consultation

Consultation must be reinitiated if: The amount or extent of taking specified in the Incidental Take Statement is exceeded, or is expected to be exceeded; new information reveals effects of the action may affect listed species in a way not previously considered; the action is modified in a way that causes an effect on listed species that was not previously considered; or, a new species is listed or critical habitat is designated that may be affected by the action (50 CFR 402.16). To re-initiate consultation, the COE should contact the Habitat Conservation Division (Oregon Branch Office) of NMFS.

2. INCIDENTAL TAKE STATEMENT

Section 4 (d) and Section 9 of the ESA prohibit any taking (harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, collect, or attempt to engage in any such conduct) of listed species without a specific permit or exemption. Harm is further defined to include significant habitat modification or degradation that results in death or injury to listed species by significantly impairing behavioral patterns such as breeding, feeding, and sheltering (64 FR 60727; November 8, 1999). Harass is defined as actions that create the likelihood of injuring listed species to such an extent as to significantly alter normal behavior patterns which include, but are not limited to, breeding, feeding, and sheltering. Incidental take is take of listed animal species that results from, but is not the purpose of, the Federal agency or the applicant carrying out an otherwise lawful activity. Under the terms of section 7(b)(4) and section 7(o)(2), taking that is incidental to, and not intended as part of, the agency action is not considered prohibited taking provided that such taking is in compliance with the terms and conditions of this incidental take statement. An incidental take statement specifies the impact of any incidental taking of threatened species. It also provides reasonable and prudent measures that are necessary to minimize impacts and sets forth terms and conditions with which the action agency must comply in order to implement the reasonable and prudent measures.

2.1 Amount or Extent of the Take

The NMFS anticipates that the action covered by this Opinion has more than a negligible likelihood of resulting in incidental take of listed salmonids because of detrimental effects from increased turbidity levels (non-lethal), and the potential for direct incidental take during in-water work (lethal and non-lethal). Effects of actions such as the one covered by this Opinion are largely unquantifiable in the short term, and are not expected to be measurable as long term effects on habitat or population levels. Therefore, even though NMFS expects some low level incidental take to occur due to the action covered by this Opinion, the best scientific and commercial data available are not sufficient to enable NMFS to estimate a specific amount of incidental take to the species itself. In instances such as these, the NMFS designates the expected level of take as "unquantifiable." Based on the information provided by the COE and other available information, NMFS anticipates that an unquantifiable amount of incidental take could occur as a result of the action covered by this Opinion. The extent of the take is limited to the project area.

2.2 Reasonable and Prudent Measures

The NMFS believes that the following reasonable and prudent measures are necessary and appropriate to avoid or minimize take of listed salmonid species resulting from the action covered by this Opinion. The COE shall include, as part of the Section 10 River and Harbors Act permit, measures that will:

1. Minimize the amount and extent of incidental take resulting from in-water work required to complete the project addressed in this Opinion by implementing measures to limit the duration and extent of in-water work.

2. Minimize the amount and extent of take and impacts on critical habitat resulting from erosion and chemical pollution associated with this project by implementing measures that minimize the movement of soils and sediment both into, and within, the river and minimize or avoid the potential for chemical pollution.
3. Complete a comprehensive monitoring and reporting program to ensure this Opinion is meeting its objective of minimizing the likelihood of take from permitted activities.

2.3 Terms and Conditions

To be exempt from the prohibitions of section 9 of the ESA, the COE must require, as part of the Section 10 Permit, and the applicant and/or their contractors must comply with the following terms and conditions, which implement the reasonable and prudent measures described above. These terms and conditions are non-discretionary.

1. To implement reasonable and prudent measure #1, above, the COE shall ensure that:
 - a. All work below the ordinary high water line will be completed within two hours before or after low tide periods for that reach of the Columbia River where the project is located. Any variances to work outside the low tide period will first be approved by, and coordinated with, NMFS.
 - b. Operate the equipment to be used to perform the excavation work from the existing boat ramps or the streambank to the maximum extent possible.
 - c. Construction impacts (excavation) will be confined to the minimum area necessary to complete the project.
 - d. Once excavation work is begun, it will be completed within three days.
2. To implement reasonable and prudent measure # 2, above, the COE shall ensure that:
 - a. All equipment that is used for instream work will be cleaned prior to entering the job site. External oil and grease will be removed, along with dirt and mud. Untreated wash and rinse water will not be discharged into streams and rivers without adequate treatment. Areas for fuel storage and servicing of construction equipment and vehicles will be located at least 150 feet away from any water body.
 - b. Material excavated from the river bottom will be placed in locations where it cannot enter streams or other water bodies.
 - c. Appropriate erosion control devices (e.g. silt fencing or straw bales) will be placed to prevent turbid water from excavated material from re-entering the river or other

water bodies, as the excavated material is loaded or being transported to the final upland disposal site.

3. To implement reasonable and prudent measure #3, above, the COE shall ensure that:
 - a. Within 30 days of completing the project, the COE will submit a monitoring report to NMFS describing the COE's success meeting these terms and conditions. This report will consist of the following information.
 - i. Project identification.
 - (1) Project name;
 - (2) starting and ending dates of work completed for this project; and
 - (3) the name and address of the construction supervisor.
 - ii. A narrative assessment of the project's effects on natural stream function.
 - iii. Photographic documentation of environmental conditions at the project site before, during and after project completion.
 - (1) Photographs will include general project location views and close-ups showing details of the project area and project, including pre and post construction.
 - (2) Each photograph will be labeled with the date, time, photo point, project name, the name of the photographer, and a comment describing the photograph's subject.
 - (3) Relevant habitat conditions include characteristics of channels, streambanks, riparian vegetation, flows, water quality, and other visually discernable environmental conditions at the project area, and upstream and downstream of the project.
 - b. If a dead, injured, or sick endangered or threatened species specimen is located, initial notification must be made to the National Marine Fishery Service Law Enforcement Office, located at Vancouver Field Office, 600 Maritime, Suite 130, Vancouver, Washington 98661; telephone: 360/418-4246. Care should be taken in handling sick or injured specimens to ensure effective treatment and care or the handling of dead specimens to preserve biological material in the best possible state for later analysis of cause of death. In conjunction with the care of sick or injured endangered and threatened species or preservation of biological materials from a dead animal, the finder has the responsibility to carry out instructions provided by Law Enforcement to ensure that evidence intrinsic to the specimen is not unnecessarily disturbed.
 - c. Monitoring reports will be submitted to:

National Marine Fisheries Service
Attn: OSB2001-0103
525 NE Oregon Street
Portland, OR 97232

3. MAGNUSON-STEVENSON ACT

3.1 Background

The objective of the Essential Fish Habitat (EFH) consultation is to determine whether the proposed action described above may adversely affect designated EFH for relevant species, and to recommend conservation measures to avoid, minimize, or otherwise offset potential adverse effects to EFH resulting from the proposed action.

3.2 Magnuson-Stevens Fishery Conservation and Management Act

The Magnuson-Stevens Fishery Conservation and Management Act (MSA), as amended by the Sustainable Fisheries Act of 1996 (Public Law 104-267), requires the inclusion of EFH descriptions in Federal fishery management plans. In addition, the MSA requires Federal agencies to consult with NMFS on activities that may adversely affect EFH.

EFH means those waters and substrate necessary to fish for spawning, breeding, feeding, or growth to maturity (MSA §3). For the purpose of interpreting the definition of essential fish habitat: Waters include aquatic areas and their associated physical, chemical, and biological properties that are used by fish and may include aquatic areas historically used by fish where appropriate; substrate includes sediment, hard bottom, structures underlying the waters, and associated biological communities; necessary means the habitat required to support a sustainable fishery and the managed species' contribution to a healthy ecosystem; and "spawning, breeding, feeding, or growth to maturity" covers a species' full life cycle (50CFR600.110).

Section 305(b) of the MSA (16 U.S.C. 1855(b)) requires that:

- Federal agencies must consult with NMFS on all actions, or proposed actions, authorized, funded, or undertaken by the agency, that may adversely affect EFH;
- NMFS shall provide conservation recommendations for any Federal or State activity that may adversely affect EFH;
- Federal agencies shall within 30 days after receiving conservation recommendations from NMFS provide a detailed response in writing to NMFS regarding the conservation recommendations. The response shall include a description of measures proposed by the agency for avoiding, mitigating, or offsetting the impact of the activity on EFH. In the case of a response that is inconsistent with the conservation recommendations of NMFS, the Federal agency shall explain its reasons for not following the recommendations.

The MSA requires consultation for all actions that may adversely affect EFH, and does not distinguish between actions within EFH and actions outside EFH. Any reasonable attempt to encourage the conservation of EFH must take into account actions that occur outside EFH, such as upstream and upslope activities, that may have an adverse effect on EFH. Therefore, EFH consultation with NMFS is required by Federal agencies undertaking, permitting or funding activities that may adversely affect EFH, regardless of its location.

3.3 Identification of EFH

The Pacific Fisheries Management Council (PFMC) has designated EFH for federally-managed fisheries within the waters of Washington, Oregon, and California. The designated EFH for groundfish and coastal pelagic species encompasses all waters from the mean high water line, and upriver extent of saltwater intrusion in river mouths, along the coasts of Washington, Oregon, and California, seaward to the boundary of the U.S. exclusive economic zone (370.4 km) (PFMC 1998a, 1998b). Freshwater EFH for Pacific salmon includes all those streams, lakes, ponds, wetlands, and other water bodies currently, or historically accessible to salmon in Washington, Oregon, Idaho, and California, except areas upstream of certain impassable man-made barriers (as identified by the PFMC), and longstanding, naturally-impassable barriers (i.e. natural waterfalls in existence for several hundred years)(PFMC 1999). In estuarine and marine areas, designated salmon EFH extends from the near shore and tidal submerged environments within state territorial waters out to the full extent of the exclusive economic zone (370.4 km) offshore of Washington, Oregon, and California north of Point Conception to the Canadian border.

Detailed descriptions and identifications of EFH for the groundfish species are found in the Final Environmental Assessment/Regulatory Impact Review for Amendment 11 to the Pacific Coast Groundfish Management Plan (PFMC 1998a) and the NMFS EFH of West Coast Groundfish Appendix (Casillas et al. 1988). Detailed descriptions and identifications of EFH for salmon are found in Appendix A to Amendment 14 to the Pacific Coast Salmon Management Plan (PFMC 1999). Assessment of the potential adverse effects to these species' EFH from the proposed action is based on this information.

3.4 Proposed Actions

The proposed action is detailed above in Section 1.2. The action area includes the Columbia River stream bed and streambank in the immediate vicinity of the project site and downstream to the extent of visible short-term turbidity increases resulting from the project work. This area has been designated as EFH for various life stages of chinook salmon (*O. tshawytscha*), coho salmon (*O. kisutch*), and starry flounder (*Platyichthys stellatus*).

3.5 Effects of Proposed Action

As described in detail in Section 1.5.1, the proposed activity may result in detrimental short-term effects to water quality (turbidity) and disturbance of stream substrate. The temporary increase in stream turbidity could result in temporarily reduced feeding efficiency for juvenile salmonids or starry flounder which may be present in the area. There is also the possibility that the excavator could kill or injure juvenile salmonids or starry flounder. Direct mortality is expected to be minimal, because juvenile salmonids and starry flounder will likely avoid the equipment and can move freely upstream or downstream from the project site.

3.6 Conclusion

NMFS believes that the proposed action may adversely affect the EFH for chinook salmon, coho salmon, and starry flounder.

3.7 EFH Conservation Recommendations

Pursuant to section 305(b)(4)(A) of the Magnuson-Stevens Act, NMFS is required to provide EFH conservation recommendations for any Federal or state agency action that would adversely affect EFH. The conservation measures that the COE has built into the project and all of the Reasonable and Prudent Measures and the Terms and Conditions contained in Sections 2.2 and 2.3 are applicable to salmon and groundfish EFH. Therefore, NMFS incorporates each of these measures here as EFH recommendations.

3.8 Statutory Response Requirement

Please note that the Magnuson-Stevens Act (section 305(b)) and 50 CFR 600.920(j) requires the COE to provide a written response to NMFS' EFH conservation recommendations within 30 days of its receipt of this letter. The response must include a description of measures proposed to avoid, mitigate, or offset the adverse impacts of the activity on EFH. If the response is inconsistent with a conservation recommendation from NMFS, the agency must explain its reasons for not following the conservation recommendations.

3.9 Consultation Renewal

The COE must reinitiate EFH consultation with NMFS if either action is substantially revised or new information becomes available that affects the basis for NMFS' EFH conservation recommendations (50 CFR 600.920).

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